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No. 02-809

In The Supreme Court Of The United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

BRIEF OF OHIO AND 20 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF *AMICI* INTEREST

The State of Ohio, together with 20 other *amici* States and Territories, join the State of Maryland in urging the Court to reverse the decision of the Court of Appeals of Maryland. The *amici* States and Territories suggest that where a police officer faces evidence that a crime has been committed by at least one of the occupants in an automobile stopped by the police, the Fourth Amendment does not require that all of the car's occupants be allowed to go free simply because the evidence fairly implicates all, rather than one of, the suspects. For these reasons and those elaborated below, we offer this brief to urge the Court to reverse the decision of the Court of Appeals of Maryland and to confirm that police officers who encounter multiple suspects traveling together in a private vehicle in which drugs are found in the passenger compartment are not prevented from arresting all of the car's occupants on drug charges when all of the occupants deny ownership of the contraband.

The decision of the Maryland Court of Appeals in this case—holding that a "police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of the car is insufficient to establish probable cause for an arrest of a front seat passenger," Pet. App. at 23a—limits the arrest powers of law enforcement officers in a way that the Fourth Amendment does not require. The court below effectively imposed on law enforcement officers at the time of arrest the kind of admittedly-higher standard that the government must later meet at trial, a result not compelled by this Court's cases.

Amici States share a common interest in the ability of their respective law enforcement officers and their local communities to arrest suspected criminals when probable cause supports those arrests, and in allowing police officers to make sound probable-cause-to-arrest decisions without

imposing on them the burden of deciding whether prosecutors will later be able to prove the case at trial. *Amici* States respectfully urge this Court to reverse the judgment of the Court below and hold that under the totality of the circumstances, a police officer faced with multiple occupants of a car in which drugs and a roll of cash are found in the passenger compartment has probable cause to arrest all of the passengers for constructive possession of the drugs when all of the occupants deny ownership of the contraband and no other evidence points to only one of the suspects as the sole wrongdoer.

SUMMARY OF ARGUMENT

This Court's cases firmly establish that probable cause to arrest exists "where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959), *citing Carroll v. United States*, 267 U.S. 132, 162 (1925). Because probable cause looks to the totality of the circumstances and requires only the "probability or substantial chance of criminal activity, not an actual showing of such activity," *Illinois v. Gates*, 462 U.S. 213, 243 n. 13 (1983), the police in this case reasonably determined that there was probable cause to arrest Pringle as well as the other two passengers in the car. When none of the occupants of the car admitted ownership of the drugs and the roll of cash found in the passenger compartment, and no other evidence effectively singled out one of the occupants as the perpetrator, there was probable cause to arrest all of the occupants for constructive possession of the drugs. The Maryland court's contrary conclusion cannot be squared with this Court's precedent.

Whether single or multiple suspects are involved, probable cause to arrest does not require proof sufficient to establish guilt, *Brinegar v. United States*, 338 U.S. 160, 173 (1949), but instead requires "only the probability, not a prima facie showing of criminal activity," *Illinois v. Gates*, 462 U.S. at 235. Accordingly, this Court's cases do not require that police narrow a list of likely suspects for a crime down to one in order to make an arrest. Under the Maryland court's ruling in this case, it is questionable whether *any* of the three occupants of the car in which Pringle was traveling could be lawfully arrested for possession of the drugs, despite the "substantial chance," *Illinois v. Gates*, 462 U.S. at 243 n. 13, that each was involved in the criminal possession of cocaine. Contrary to the Maryland court's decision, where it is evident that a crime has been committed and at least one of the occupants of the car is the wrongdoer, probable cause exists to arrest all three of the occupants of the car.

As part of police officers' assessment of probable cause in this setting, police officers should be able to consider the likelihood that car passengers will be engaged in a common enterprise with the driver. *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999). Unlike a movie theater, a public bus, or a restaurant or bar, *cf.* Pet. App. at 21a, n. 12; *Ybarra v. Illinois*, 444 U.S. 85 (1979), passengers in a private automobile are likely to know one another and to have some common purpose for traveling together. *Cf. Maryland v. Wilson*, 519 U.S. 408, 413-14 (1997) (permitting police to order passengers as well as drivers out of a stopped vehicle to preserve officer safety, on the assumption that the passenger and the driver share a common goal).

Evidence that patent criminal activity is occurring in the passenger compartment of a car strengthens the inference of a "common enterprise" among the passengers and driver. *See County Court of Ulster County, New York v. Allen* ("*Ulster County*"), 442 U.S. 140 (1979) (upholding as rational a statutory presumption that the presence in an

automobile of any firearm is evidence of its possession by all persons occupying the automobile at the time the item is found). Where the crime consists of joint and constructive possession of contraband such as drugs or illegal weapons, it is reasonable to conclude that contraband kept in the passenger compartment of a car is within the dominion and control of any occupant of the car. *Cf. Ulster County*, 442 U.S. 140; *New York v. Belton*, 453 U.S. 454, 460 (1981) (permitting search of passenger compartment of automobile in which person arrested was traveling).

The Maryland court's ruling here significantly undercuts police officers' ability to consider these "practical, commonsense conclusions about human behavior" in making probable-cause-to-arrest determinations, *cf. Illinois v. Gates*, 462 U.S. at 231, as officers have done throughout the country for years. *See, e.g., United States v. Buckner*, 179 F.3d 834 (9th Cir. 1999), *cert. denied sub nom. Murry v. United States*, 528 U.S. 1094 (2000) (probable cause to arrest both occupants of car in which drugs were found); *Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (probable cause to arrest all three occupants of car because absent explanation to the contrary, the metal-piercing bullets found in the car were the property of one, two or all three of the occupants); *Smith v. State*, 363 So.2d 21 (Fla. 1978) (probable cause to arrest passenger when drugs found on seat between passenger and driver; officer could not determine who owned drugs). The Maryland court's rule in this case threatens to have significant detrimental effects on law enforcement efforts throughout the country.

United States v. Di Re, 332 U.S. 581 (1948), does not support the result reached by the Court of Appeals of Maryland in this case. In *Di Re*, a government informant said nothing to incriminate Di Re, the front seat passenger in the car, in the driver's transfer of counterfeit ration coupons to the informant, and the transfer of the paper ration coupons did not in and of itself suggest criminal activity. By contrast,

in this case five baggies of cocaine were stashed behind an upright armrest in the back seat of the car, within reach of all of the occupants of the car, but all three occupants denied ownership of the drugs. The not-so-innocent-looking drugs in the passenger compartment and the claim by all occupants of the car that they were not the owners of the drugs easily differentiate this case from *Di Re*. Additionally, any implication in *Di Re* that police generally are unjustified in inferring a common purpose among occupants of a private passenger car has been severely eroded, if not outright eliminated, by this Court's reasoning in *Wyoming v. Houghton*, 526 U.S. at 304-05, and *Ulster County*, 442 U.S. at 163-65. The Maryland court's decision should be reversed.

ARGUMENT

The Police Officers Here Had Probable Cause To Believe That All Of The Car's Occupants, Including Respondent Pringle, Possessed Drugs, So The Warrantless Arrest Of Pringle Was Valid.

The court below misapplied this Court's precedent when the Maryland court held that there was not probable cause to support the arrest of Pringle where he had not admitted ownership of the drugs found in the car, was not the owner of the vehicle but was "merely the front seat passenger," and the only evidence supporting the arrest was a sum of money in the closed glove compartment and drugs behind the armrest in the back seat of the car. Pet. App. at 2a, 23a. Although the Maryland court acknowledged that a "finding of probable cause requires less evidence than is necessary to sustain a conviction," Pet. App. at 7a, 8a, that court nevertheless looked to sufficiency-of-the-evidence cases as establishing the law for determining possession, even at the probable cause to arrest stage. Pet. App. at 8a-9a, 17a.

Perhaps more importantly, the Maryland court erroneously demanded "additional facts" tending to "establish [Pringle's] knowledge and dominion or control over the drugs," Pet. App. at 21a, concluding that the drugs in the back seat and the roll of cash in the front glove compartment were insufficient to establish probable cause to arrest Pringle. In so doing, the Maryland court improperly gave short shrift to the fact that none of the three occupants in the confined space of the car acknowledged ownership of the drugs, which provided probable cause to believe that a crime—possession of cocaine—was committed in the presence of the officers by at least one, and perhaps all three, of the car's occupants. Contrary to the implication of the Maryland court's ruling, this Court's precedent on probable cause did not require the officers—faced with a situation where a crime has been committed in the officers' presence by at least one of the occupants of a private passenger car—to simply walk away.

This Court's standard for probable cause permitted the arrest of Pringle and the other occupants of the car in this case. Because Pringle's arrest without a warrant comported with the Fourth Amendment, the lower court's contrary decision should be reversed.

I. Because Probable Cause To Arrest Does Not Require Proof Sufficient To Sustain A Conviction, There Is Probable Cause To Arrest All Three Occupants Of A Car In Which Drugs Are Found In The Passenger Compartment.

While the Maryland court apparently would not quibble with the proposition that the drugs found behind the back armrest of the car in which Pringle and his companions were traveling provided probable cause to believe that "...an offense has been or [was] being committed" in the officer's presence, *Draper v. United States*, 358 U.S. at 313, *citing Carroll v. United States*, 267 U.S. at 162, Pet. App. at 18a, the Maryland court decided that the police did not have

probable cause to arrest Pringle, the front seat passenger, for drug possession. Because the other two occupants of the car were released after Pringle confessed, the Maryland court had no occasion to decide whether *any* of the three in the car could be properly arrested, but that court's reasoning makes it doubtful that any arrests could have been made consistent with that court's view of the law.

Whether single or multiple suspects are involved, probable cause to arrest does not require proof sufficient to establish guilt, *Brinegar v. United States*, 338 U.S. at 173, but instead requires an evaluation of the totality of the circumstances to determine whether there is a "probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. at 243 n. 13. Because probable cause requires "only the probability, not a prima facie showing of criminal activity," *Illinois v. Gates*, 462 U.S. at 235, this Court's cases do not require that police narrow a list of likely suspects for a crime down to one in order to make an arrest.[1]

In *Chambers v. Maroney*, 399 U.S. 42, 44-47 (1970), for example, the Court concluded that there was probable cause to arrest all four occupants of a car seen circling a gas station and then speeding away, even when the robbery was committed by two men. Thus, the automobile context differs from, for example, the scenario in *Ybarra v. Illinois*, 444 U.S. 85, which held that a search warrant for a tavern and the tavern owner for evidence of possession of a controlled

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[1] The English common law similarly required some basis for suspecting a particular individual but did not require that one individual be singled out from all other possible suspects. *See* Grano, "Probable Cause and Common Sense: a Reply to the Critics of Illinois v. Gates," 17 *Journal of Law Reform* 465, 480-81 (1984), *citing* 1 M. Hale, The History of the Pleas of the Crown 580, 582-83, 588 (1736) *and* 2 M. Hale, *supra*, 78-79, 80-90, 91, 101, 103, 113, 150.

substance did not justify the search of the tavern's patrons and the consequent discovery of heroin in a packet in a patron's (Ybarra's) pants pocket. 444 U.S. at 90-91. Searching everyone in a restaurant, bar, or even a public bus or other common carrier is a far cry from the arrest of three occupants of a private passenger car for possession of drugs found in the back seat.

In contrast to the unreasonable result reached by the Maryland court in this case, the Model Code of Pre-Arraignment Procedure, Section 120.1 commentary, at 295 (Official Draft 1975), illustrates the correct view of probable cause to arrest in a multiple-suspect situation. The Model Code commentary concludes that an officer could properly arrest two persons present at the scene of a murder, found standing over the dead body, on the basis that the officer has a reasonable basis to believe that either of the two of them killed the dead man. *Id.*, *citing* Restatement of Torts (Second), Section 119, illustration 2 (1965). *Accord*, 2 LaFave, Search and Seizure Section 3.2(e), at 64 (3d Ed. 1996). The Maryland court's approach to the multiple-suspect situation in this case would invalidate the arrests of the two murder suspects in the Model Code's illustration.

Under the Maryland court's ruling in this case, it is questionable whether *any* of the three occupants of the car in which Pringle was traveling could be lawfully arrested for possession of the drugs, despite the "substantial chance", *Illinois v. Gates*, 462 U.S. at 243 n. 13, that each was involved in the criminal possession of cocaine. The Maryland decision below effectively requires police officers in the field to analyze probable cause in multiple suspect situations under the standard that a "legal technician" such as a prosecutor would use, *cf. Brinegar v. United States*, 338 U.S. at 175, with the likely result of less effective crime prevention and prosecution. Contrary to the Maryland court's decision, where it is evident that a crime has been committed

and at least one of the occupants of the car is the wrongdoer, probable cause exists to arrest all three of the occupants of the car.

II. Probable Cause Is Supported Here By The Judgment That Passengers In A Private Car Are Often Engaged In A Common Enterprise With The Driver, And By The Principle That Occupants Of A Car Jointly And Constructively Possess Contraband Kept In The Passenger Compartment.

Concluding that discovery of cocaine in the back armrest of the car was insufficient to establish probable cause for a front seat passenger's arrest, the court below required "additional facts . . . that would tend to establish [Pringle's] knowledge and dominion or control over the drugs", Pet. App. at 21a, to justify Pringle's arrest. In doing so, the Maryland court failed to recognize at least two important factors that a reasonable officer's assessment of probable cause to arrest legitimately includes: (1) the commonsense conclusion that car passengers will be engaged in a common enterprise with the driver, *Wyoming v. Houghton*, 526 U.S. at 304-05, and will often have a shared interest in concealing evidence of wrongdoing; and (2) the reasonable judgment that drugs kept behind an armrest in the passenger compartment of a car are within the dominion and control of all occupants of the car, providing probable cause to arrest all of the occupants for joint and constructive possession of the contraband.

In *Wyoming v. Houghton*, this Court upheld the search of containers in a passenger's purse found in the back seat of a lawfully stopped car where the officers had probable cause to believe the car contained contraband. The Court observed that a car passenger, unlike an "unwitting tavern patron" where a search warrant is executed, *cf. Ybarra v. Illinois*, 444 U.S. 85, "will often be engaged in a common enterprise with

the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." 526 U.S. at 304-05, *citing Maryland v. Wilson*, 519 U.S. at 413-14 (permitting police to order the passengers, as well as the driver, out of a lawfully stopped vehicle to prevent harm to the officer by passengers).

Other decisions of this Court recognize the validity of this straightforward observation. In *Ulster County*, 442 U.S. 140, this Court rejected a Due Process clause challenge to the application of a statutory presumption that the presence in an automobile of any firearm is evidence of its possession by all persons occupying the automobile at the time the item is found. The Court thus upheld the convictions of the car's adult occupants—in a case where two loaded handguns were found protruding from the (juvenile) front seat passenger's handbag and all four occupants of the car were convicted of possession of the firearms. *Id.*; *cf. Chambers v. Maroney*, 399 U.S. at 44-47 (finding probable cause to arrest all four occupants of a car seen circling a gas station and then speeding away, even when the robbery was committed by two men). And in *Carroll v. United States*, 267 U.S. at 160-61, the Court confirmed that there was probable cause to stop and search a car for contraband liquor where the two occupants were in the same vehicle as when they previously tried to sell whiskey to the officers.

The presence of evident contraband such as drugs or illegal weapons in the passenger compartment of a car strengthens the inference that passengers in the car are traveling together for a common purpose or are engaged in a common activity with the driver. In *Ulster County*, 442 U.S. at 163-65, for example, the Court concluded that it was not unreasonable for the jury to infer that when the car was stopped for speeding, the three other occupants of the car anticipated the risk of a search and attempted to conceal the guns in the female defendant's purse on the front seat. And it is an unsurprising proposition that those engaging in serious

criminal activity rarely invite innocent bystanders to accompany them. *See, e.g., Ulster County*, 442 U.S. at 165, n.27 (*citing* Interim Report of Temporary State Commission to Evaluate the Drug Laws, N.Y. Leg. Doc. No. 10, p. 69 (1972)) ("We do not believe that persons transporting dealership quantities of contraband [in a car] are likely to go driving about with innocent friends or that they are likely to pick up strangers.") *Accord, United States v. Martinez-Molina*, 64 F.3d 719, 729 (1st Cir. 1995) ("We do not think that officers in the field are required to divorce themselves from reality or ignore the fact that 'criminals rarely welcome innocent persons as witnesses to serious crimes and rarely seek to perpetrate felonies before larger-than-necessary audiences.'") (citation omitted). If "legislative judgments such as [the one embodied in the statute in the *Ulster County* case] deserve respect" in assessing the constitutionality of statutory evidentiary presumptions, 442 U.S. at 165, n. 27, then certainly police officers may rely upon similar judgments in determining whether there is probable cause to arrest occupants of a car in which drugs are found.

As this Court recognized in *Wyoming v. Houghton*, 526 U.S. at 304-05, an inference of "common enterprise" among a car's driver and passengers does not apply to persons frequenting a public tavern or restaurant where a search warrant is executed. Nor would it hold true for passengers on a public bus or other common carrier, or a movie theater. For this reason, the concern expressed by the court below—that a ruling upholding Pringle's arrest would permit the police to place everyone in a bus or movie theater under arrest until some person confessed to possession of the contraband, Pet. App. at 21a, n.12—is not well-founded.

A police officer reasonably could infer "joint and constructive possession" of the drugs found in the passenger compartment of the car by all of the occupants of the car. *See* Md. Code Ann. Crim. Law. Art., Section 5-101(u) (2002); *cf. National Safe Deposit Co. v. Stead*, 232 U.S. 58, 67 (1914)

(noting that actual possession and constructive possession may "shade into one another"); *United States v. Martinez*, 588 F.2d 495, 498 (5th Cir. 1979) (constructive possession requires the ability to reduce an object to actual possession). An officer reasonably concludes that drugs in the passenger compartment are accessible to any occupant of a car, and therefore that all of the occupants exercise "dominion or control" over the drugs.

This Court confirmed the reasonableness of that conclusion in *Ulster County*, 442 U.S. at 164-65, noting that where guns were lying on the floor or seat of the car in plain view of the other occupants of the car, "... it is surely rational to infer that each of the respondents was fully aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." This Court applied a similar principle in *New York v. Belton*, 453 U.S. at 460, permitting a police officer who made a lawful custodial arrest of the occupant of the automobile to search the passenger compartment of that automobile incident to the arrest, and any open or closed containers in that compartment. The Court in *Belton* based that rule in part on "... the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee [occupant] might reach in order to grab a weapon or evidentiary [item]." 453 U.S. at 460, *citing Chimel v. California*, 395 U.S. 752, 763 (1969) (permitting a search without a warrant of the area from within which an arrestee might gain possession of a weapon or destructible evidence). The Court's observation in *Belton*—that items in the passenger compartment of a car generally are within reach of an occupant of the car—underscores the reasonableness of the police officers' arrest of Pringle and his companions for joint and constructive possession of the drugs in the car.

To require, as the Maryland court did, further evidence of "knowledge" of the drugs in the passenger compartment by one of the suspects at the probable-cause-to-arrest stage, Pet. App. at 21a, where all of the car's occupants refused to respond to the officer's questions about who owned the drugs, could well preclude *any* arrest for possession of illegal contraband in such a situation. Reasonable inferences such as the ones that the police made here regarding criminal possession of drugs by the occupants of the car are not foreclosed at the probable-cause-to-arrest stage simply because the suspects refuse to talk to the officer (or give him evasive or misleading answers). *Cf. Wyoming v. Houghton*, 526 U.S. at 298 (defendant lied about identification to avoid being found to be owner of drugs in her purse).

The Maryland court's ruling below undercuts the practical, commonsense conclusions that police officers in multiple suspect cases such as this one reasonably make. *See, e.g., United States v. Buckner*, 179 F.3d at 838-39 (probable cause to arrest both occupants of car in which drugs were found); *Fernandez v. Perez*, 937 F.2d at 370 (probable cause to arrest all three occupants of car because absent explanation to the contrary, the metal-piercing bullets found in the car were the property of one, two or all three of the occupants); *Braxton v. State*, 350 So.2d 753 (Ala. 1977) (probable cause to arrest passenger when gun found hidden in close proximity); *Smith v. State*, 363 So. 2d 21 (Fla. 1978) (probable cause to arrest passenger when drugs found on seat between passenger and driver); *People v. Zeller*, 51 Ill. App. 3d 935, 367 N.E.2d 488 (1977) (probable cause to arrest rear seat passenger when open containers of alcohol found in front seat); *State v. Horton*, 625 N.W.2d 362 (Iowa), *cert. denied*, 534 U.S. 928 (2001) (probable cause to arrest both occupants of car for possession of marijuana); *State v. Hanson*, 588 N.W. 2d 885 (S.D.), *cert. denied*, 528 U.S. 835 (1999) (probable cause to arrest front seat passenger for possession of marijuana based on marijuana leaf and seed and pipe with

marijuana residue found in back seat of car); *State v. Mitchell*, 482 N.W.2d 364, 368-69 (Wisc. 1992) (an officer had probable cause to arrest both occupants of a vehicle in which the officer detected the presence of marijuana odor and smoke); *People v. Vermouth*, 20 Cal. App. 3d 746, 98 Cal. Rptr. 65, 71 (1971) (an officer properly arrested a car's driver and passenger where the circumstances suggested that both were in possession of weapons and cash found in the vehicle). The rule applied by the court below—which seemingly would render illegal the arrests upheld in the cases cited above—would significantly and adversely affect law enforcement efforts throughout the country.

III. Probable Cause To Arrest All Of A Car's Occupants Exists When A Crime, Such As Drug Possession, Has Been Committed Within the Passenger Compartment Of A Car, And No Evidence Limits The Suspects To One Individual.

Although the Maryland court majority in its ruling below cited one of this Court's cases, *United States v. Di Re*, 332 U.S. 581, in holding that the arrest of Pringle was without probable cause, Pet. App. at 20a, that case in no way compels the result that the Maryland court reached. While it is true that in *United States v. Di Re*, the Court rejected the argument that Di Re could be arrested simply because he was present in a car in which the driver alone had just committed an illegal transaction with an undercover informant, the facts in that case are easily distinguishable from the facts before the Court here.

In *Di Re*, a government informant told police that the driver of the car in which he was traveling had given him the counterfeit ration coupons, but the informant said nothing to incriminate Di Re, who was the front seat passenger. Additionally, transfer of the paper ration coupons did not in and of itself connote criminal activity. 332 U.S. at 593. *See also Henry v. United States*, 361 U.S. 98, 103 (1959)

(defendant's riding in a car with person suspected of some implication in some interstate shipments, stopping in an alley and picking up packages, were all acts that were outwardly innocent and did not establish probable cause to arrest defendant for theft of interstate shipments). This Court concluded that there was no probable cause to arrest Di Re, given the evidence clearly implicating the driver (and the government informant), but not Di Re, in the criminal transaction.

Unlike Di Re, Pringle was not simply associating with someone independently suspected of criminal activity, but was an occupant, with two others, in the passenger compartment of a car in which drugs and a roll of cash were accessible to all of the car's occupants. *Cf. Sibron v. New York*, 392 U.S. 40, 62-63 (1968) (holding search of defendant's person illegal and not incident to lawful arrest, where only information officer had about defendant was that he had seen defendant talking to several known narcotics addicts over a period of eight hours). In this case, five baggies of cocaine were stashed behind an upright armrest in the back seat of the car, within reach of all of the occupants of the car, but all three occupants denied ownership of the drugs. The not-so-innocent-looking drugs in the passenger compartment, and the claim by all occupants of the car that they were not the owners of the drugs, easily differentiate this case from *Di Re*, as does the lack of any informant's tip or other information pointing to one particular suspect at the scene of the crime, but no other.

In *Di Re*, this Court observed that "the argument that one who accompanies a criminal to a crime rendezvous cannot be assumed to be a bystander, *forceful enough in some circumstances*, is farfetched . . . where the alleged substantive crime is one which does not necessarily involve any act visibly criminal." 332 U.S. at 593 (emphasis supplied). Here, unlike in *Di Re*, the police officers' inference that Pringle and his companions jointly possessed the drugs

located in the passenger compartment of the car in which they were traveling was indeed "forceful" and not "far-fetched." Reasonable police officers were entitled under this Court's probable cause cases to make that inference, and to arrest Pringle and the other occupants of the car. Thus, *Di Re* is fully distinguishable from this case.

Further, even if *Di Re* at one time may have implied that police generally are unjustified in inferring a common purpose among occupants of a private passenger car, such an implication has been severely eroded, if not outright eliminated, by this Court's reasoning in *Wyoming v. Houghton*, 526 U.S. at 304-05, and *Ulster County*, 442 U.S. at 163-65. Passengers in a car on a public highway have a reduced expectation of privacy, *Wyoming v. Houghton*, 526 U.S. at 303-04, as this Court recognized in upholding a search of a passenger's belongings when there is reason to believe contraband or evidence of criminal wrongdoing is in the car. Unlike a patron in a restaurant or bar, *cf. Ybarra v. Illinois*, 444 U.S. 85, or a passenger on a common carrier, passengers in a private car likely share some common purpose in traveling with the driver. *Wyoming v. Houghton*, 526 U.S. at 304-05. And, if it is "entirely rational," in the context of a criminal trial, for a statutory presumption to permit an inference of illegal possession of a gun in the car by all the occupants, *Ulster County*, 442 U.S. at 163, then it cannot be that police officers are foreclosed from relying upon a similar inference in arresting for drug possession all occupants of a car in which the drugs are found in the passenger compartment.

For all of the foregoing reasons, neither *Di Re* nor the Court's other probable cause cases support the result reached in this case by the Maryland court. The Maryland court's decision should be reversed.

CONCLUSION

For the foregoing reasons, the *amici* States respectfully urge the Court to reverse the lower-court decision.

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